

NADDA (Migration) [2018] AATA 5942 (3 December 2018)

DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANT:	Mr Amer NADDA
CASE NUMBER:	1714729
DIBP REFERENCE(S):	BCC2016/3564680
MEMBER:	Hugh Sanderson
DATE:	3 December 2018
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicant a Partner (Residence) (Class BS) visa.

Statement made on 03 December 2018 at 4:00pm

CATCHWORDS

MIGRATION – Partner (Residence) (Class BS) visa – Subclass 801 (Partner) – genuine spousal relationship – validly married – financial, household and social aspects of relationship – nature of commitment – religious divorce – family violence – decision under review affirmed

- 1.
2. **LEGISLATION**
3. *Migration Act 1958 (Cth), ss 5F, 65*
Migration Regulations 1994 (Cth), Schedule 2, cl 801.221(2)

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

4. This is an application for review of a decision made by a delegate of the Minister for Immigration on 3 July 2017 to refuse to grant the applicant a Partner (Residence) (Class BS) visa under s.65 of the *Migration Act 1958* (the Act).
5. The applicant applied for the visa on 26 October 2016 on the basis of his relationship with his sponsor. At that time, Class BS contained only one subclass: Subclass 801 (Partner). The criteria for the grant of this visa are set out in Part 801 of Schedule 2 to the Migration Regulations 1994 (the Regulations).
6. The delegate refused to grant the visa on the basis that the applicant did not satisfy cl.801.221 because the delegate was not satisfied that the applicant was the spouse, as defined in s.5F of the Act, of the sponsoring partner prior to the cessation of the claimed relationship.

Background

7. The applicant is a citizen of Lebanon and is currently 29 years old. The sponsor of the applicant was Alaa El Bardouh. She was born in Lebanon and is currently 22 years old. She was granted a Carer visa and first entered Australia on 29 June 2013. She has the right to reside permanently in Australia.
8. The applicant claimed that the parties first met in September 2011 as the applicant and the sponsor lived in the same village in Lebanon. It was claimed that when the sponsor returned for a holiday in Lebanon in 2014 they fell in love and became engaged to be married on 21 November 2014. The applicant claimed that he bought the sponsor gold worth US\$3,800 for the engagement. It is noted that the sponsor's movement records show that she was in Australia at that time and departed Australia on 1 December 2014, returning on 31 December 2014. The sponsor also travelled to Lebanon on 8 December 2015, returning on 12 February 2016.
9. The applicant applied for a Subclass 300 Prospective Marriage visa. The applicant was granted the Prospective Marriage visa on 14 September 2016 and first entered Australia on 26 September 2016.
10. After arriving in Sydney, the applicant remained with his sister before travelling to stay with the sponsor and her family in Melbourne. The parties were married on 24 October 2016. The current application was then filed by the applicant. Statements were provided by the sponsor's mother and sister claiming that the relationship was genuine. The applicant was granted a Subclass 820 Partner (Temporary) visa on 11 November 2016.
11. On 23 January 2017 the sponsor advised the Department that she was withdrawing her sponsorship of the applicant as she was no longer in a relationship with him and their relationship had broken down irretrievably. She stated that they had already obtained an Islamic divorce.
12. When this information was put by the Department to the applicant he claimed that he had suffered family violence committed by the sponsoring partner. In support of that claim he provided the following documents:
 - Statutory declaration of the applicant sworn 6 March 2017;

- Statutory declaration of Dr George Hatoum, general practitioner, sworn 6 March 2017; and
- Statutory declaration of Medhat Metry, psychologist, sworn 2 March 2017.

13. The applicant claimed that his relationship was full of love and joy with no issues when they started living together. He said that his mother-in-law requested that she buy the sponsor more gold for their wedding day and he had to borrow money to buy her gold worth AU\$7,000. He claimed that one month into their marriage, the sponsor's attitude to him changed and she was speaking on her phone in a suspicious and private way and did not allow him into her life. He believed that she was having an affair with somebody else and was doing everything she could to force him out of her life. He claimed that he had suffered family violence because she was disrespectful to him and had threatened to have his visa cancelled.
14. The applicant claimed that his sister invited them to a baby shower in Sydney, but the sponsor refused to travel with him to Sydney. After arriving in Sydney, he claimed that the sponsor contacted him and demanded that he return to Melbourne that day or she would cancel his visa. When he did return to Melbourne the sponsor was not waiting for him to pick him up and he had to take a taxi home. When he arrived at the home they were living in with the sponsor's family they refused to let him in. He claims that he had to end his relationship with her because he could not tolerate her abusive behaviour and he felt unsafe, especially when she started threatening him that she would ask her brother, who is a migration agent, to kick him out of the country.
15. The Department noted the claim that the applicant had suffered family violence. The Department requested information to indicate that the parties had been in a genuine relationship. The applicant provided photos of himself, the sponsor and her family. He provided statements from his sister, aunt and a friend which said that the applicant was a very honest person and it was a shock that his relationship with the sponsor had come to an end.
16. The delegate who considered the application noted that claims had been made that the applicant had suffered family violence, but first considered whether the applicant and the sponsor had ever been in a genuine relationship. The delegate noted the following issues:
 - The bank account details provided by the applicant as to his sole bank account do not indicate the parties were pooling their financial resources;
 - There was no other information which would indicate the financial aspects indicated the parties were living in a genuine spousal relationship;
 - Although claiming that the applicant was living with the sponsor's family in their home, the evidence supporting this did not indicate that the parties had established a household together which would be expected in a genuine relationship;
 - The parties were married and photos had been taken of the applicant with other people, but there was limited information as to the social aspects of the relationship;
 - There was little information which would indicate the parties had any commitment to a long-term relationship;
 - The applicant accused the sponsor of having an affair with somebody else;

- Despite claiming to have been in a relationship with the sponsor throughout the time that she had been in Australia, when the applicant applied for Visitor visas to enter Australia over that period he did not mention in those applications any relationship with the sponsor;
 - Although formally married to each other, there was no information that the parties had ever committed to the relationship or considered it to be a long-term relationship; and
 - The parties did not show any commitment to any relationship together.
17. The delegate found that the applicant and the sponsor had never been in a genuine and continuing relationship and accordingly found that the applicant was not the spouse of the sponsoring partner as defined in s.5F of the Act prior to the claimed relationship ending. Accordingly, despite the claims that the applicant had suffered family violence, the delegate found the applicant did not meet the criteria in cl.801.221(6)(b) and refused the application.

Information to the Tribunal

18. The applicant provided further documents to the Tribunal including the following:
- The applicant's bank account details; and
 - Copies of the applicant's domestic air travel itineraries.
19. The applicant appeared before the Tribunal on 28 November 2018 to give evidence and present arguments. The Tribunal also received oral evidence from the applicant's sister. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic (Lebanese) and English languages. The applicant was represented in relation to the review by his registered migration agent who attended the hearing.
20. The applicant said that after arriving in Australia on 26 September 2016 he spent two days with his sister in Sydney. He said that he wanted to get ready for the marriage with his sister and organise the marriage contract. He said that on 28 September 2016 he drove down to Melbourne with his sister and nine other relatives and friends. On arriving in Melbourne, he stayed with the sponsor's family while the other people who travelled to Melbourne stayed with other friends and relatives.
21. The applicant said that he did not share a bedroom with the sponsor until after they were married. He said that he and the sponsor were married on 9 October 2016 in the home of the sponsor's brother. He said the sponsor's brother organised everything. He said that a sheik was present who conducted the ceremony. He said that the ceremony on 9 October 2016 was both the religious and civil ceremony.
22. The Tribunal referred to the Certificate of Marriage provided by the applicant in support of the application. The Tribunal noted that the ceremony is stated to have been conducted at the Islamic Centre, Preston on 24 October 2016. This information is also repeated in the application filed by the applicant. The applicant confirmed that the marriage took place in the sponsor's brother's home but said that he might be confused about dates.
23. The applicant said that four days after the wedding he returned by himself to Sydney. He said that this was because his sister was having a party for his niece. He said the sponsor did not agree with him travelling and did not travel with him. He confirmed the sponsor was working in childcare with her mother and that over the period that he was in Sydney she would have been required to work.

24. The applicant said that he returned to Melbourne on 19 October 2016 after six days in Sydney travelling with Zakaria Sayah. He said that when he arrived in Melbourne he was expecting the sponsor to collect him from the airport but she was not there. He said that Mr Sayah travelled to his relatives' home to stay while he was forced to catch a taxi to get home. He said that he got to the sponsor's home at about midnight or 12:30 am. He tried to telephone the sponsor to let him in to the home as he had left his key to the house with the sponsor's father when he travelled to Sydney. The sponsor refused to answer her phone. He then knocked on the door to be let in, but no one in the house let him in. He said that at that time the sponsor's parents and her sister were living in the home.
25. The applicant said that he slept on the grass in the front of the house for the night. He said that he did not try to contact Mr Sayah because the sponsor had insulted him by not letting him in to the home and so felt he could not ring Mr Sayah as it would bring him shame. He said that the next day when he spoke to the sponsor she was angry with him for having spent time in Sydney. He said that when he was in Sydney he had telephoned the sponsor and she had been saying to him that if he did not come back from Sydney she would get her brother to cancel the visa.
26. The applicant said that he and the sponsor stopped sharing a bed about a month after the wedding on 9 October 2016. He could not provide any clearer indication when they stopped sharing a bed together. He said that he remained in the sponsor's bedroom and the sponsor would sleep with her niece in another room.
27. The applicant said that he returned to Sydney on 10 November 2016. He said that he left the home because he felt if he left the home the sponsor would decide to continue to be in the relationship with him. He said that he tried to telephone the sponsor, but she refused to answer his calls. He said that she would send him text messages insulting him and saying that she refused to speak to him.
28. The applicant returned to Melbourne on 26 November 2016. He said that the sponsor's family were aware that there were problems, but did not know what they were. He said that he returned to Sydney again on 1 December 2016. He said that he had continued to try to contact the sponsor when he was in Sydney but she would only respond by sending insulting text messages to him. He said that he returned to Melbourne after about a week. He said that an Islamic divorce was then arranged. He initially said this was granted in January 2017. He then said that it was granted about two weeks after he returned to Melbourne. He said that he and the sponsor attended at the Islamic Centre when the sheik approved the divorce. The Tribunal noted the applicant had stated that the relationship ended on 17 December 2016. The applicant confirmed that this was when he returned to Sydney and that the Islamic divorce had been finalised before that.
29. The Tribunal noted the bank account details the applicant had provided to the Tribunal. The applicant could not confirm when he opened his bank account. He said that the account was opened in his sole name. He said he and the sponsor never opened a joint bank account. He said that they had thought about opening a joint bank account together, but did not think they could open a joint bank account and so he opened a bank account in his sole name. The Tribunal indicated to the applicant that this did not seem plausible. The applicant said that it was true because he had never used a bank account before and he did not know how to open a joint bank account with the sponsor.
30. The applicant claimed that he had a good relationship with the sponsor's family at first. The Tribunal noted that the applicant claimed that he had suffered relevant family violence committed by the sponsor. The Tribunal asked for examples of the relevant family violence. The applicant said that he came home from work one day and the sponsor had a friend and the friend's husband with her in the home. He asked the sponsor to get him some food and

she refused to do so. He said that he felt ashamed that she had not got any food for him. He said that while he was in the sponsor's house he never made any food for himself.

31. The applicant said that he believed the sponsor was having an affair with another person. He said that she was often on the phone and she would not tell him who she was talking to. He said that he asked the sponsor to give him her phone but she refused.
32. The sponsor's sister gave evidence in support of the application. She said that although she knew the sponsor because they both came from the same town in Lebanon, she had not had any contact with the sponsor prior to the applicant arriving in Australia. She confirmed that she and other family members drove to Melbourne after the applicant arrived in Australia and had stayed with her for two days. She said that the sponsor's family hosted the dinner that night and also the following night. They then returned to Sydney. She said that they also attended the wedding on 9 October 2016.
33. The Tribunal noted the wedding certificate indicates the parties were married on 24 October 2016. She said that she had no idea why this was so. She confirmed the marriage took place on 9 October 2016.
34. She said that while the applicant was with her in Sydney she tried to speak to the sponsor by telephone. She said the sponsor would tell her that she did not want to speak to her and she had nothing to do with the problems between the applicant and herself. She said the applicant returned to stay with her in Sydney on 16 December 2016 and has not returned to Melbourne since then.
35. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

CONSIDERATION OF CLAIMS AND EVIDENCE

36. The applicant has acknowledged that his relationship with the sponsor has come to an end and he is no longer in a continuing relationship with her. He has claimed that he has suffered relevant family violence. Before the claims for family violence can be considered, the Tribunal must first consider whether the applicant would meet the requirements of cl.820.221(2) except that the relationship between the applicant and the sponsoring partner has ceased. This requires that the applicant must have first been in a spousal relationship, as defined in s.5F of the Act, with the sponsoring partner.

Whether the parties are in a spouse or de facto relationship

37. In the present case the applicant claims to have been the spouse of the sponsor who has the right to reside permanently in Australia and was identified in the Subclass 820 visa application. On the evidence before it, the Tribunal is satisfied that the sponsor was the 'sponsoring partner' of the applicant. She is no longer sponsoring him.
38. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)–(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the visa applicant's and sponsor's household and their commitment to each other as set out in r.1.15A(3), which

is extracted in the attachment to this decision. Each of the specific matters contained in r.1.15A(3) are effectively questions which must be answered: *He v MIBP* [2017] FCAFC 206.

Are the parties validly married?

39. If the parties are validly married, they may meet the requirements of a married relationship, but not a de facto relationship.
40. In the application, it was claimed that the parties were married on 24 October 2016. The parties provided a Certificate of Marriage dated 24 October 2016. The person who officiated at that ceremony was Sheik Mohammad Abou Eid and the marriage was conducted at the Islamic Centre, Preston.
41. The evidence of the applicant and his sister was that the parties were married on 9 October 2016. There does not appear to have been any ceremony which was conducted on 24 October 2016. The ceremony was purportedly conducted at the home of the sponsor's brother. There does not appear to have been any wedding ceremony conducted at the Islamic Centre. The only time the applicant went to the Islamic Centre was to get his Islamic divorce.
42. The whole circumstances of the wedding calls into question its validity. Certainly, the fact that Sheik Mohammad Abou Eid appears to have prepared a document which does not correctly state when and where the parties were married calls into question his credibility and whether he should have the authority under the *Marriage Act* to solemnise marriages. The fact that the applicant stated in his application that the parties were married on 24 October 2016 which is in contradiction to his and his sister's evidence before the Tribunal also calls into question the information provided in that application.
43. Despite this, the Tribunal finds that it should accept the Certificate of Marriage as providing conclusive evidence that the parties were married on 24 October 2016 in a valid marriage under the *Marriage Act*. Accordingly, the Tribunal finds the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

Are the other requirements for a spouse relationship met?

Financial aspects

44. The applicant claimed that he purchased various things for the sponsor, including wedding gifts and complied with demands that he buy the sponsor gold worth more than \$7,000. There is no information about what happened to this gold or any other "gifts" he purchased at the time of their marriage. That he was buying "gifts" for the sponsor and her family does not indicate the parties had joint ownership of any assets or that they were pooling their financial resources. It indicates that the sponsor's financial circumstances were being kept separate from the applicant.
45. The applicant opened a bank account in his sole name on 5 October 2016. No details were provided at any time of the financial circumstances of the sponsor. The applicant claimed that the sponsor was working in childcare. The applicant claimed that he thought about opening a joint bank account with the sponsor, but did not think that this was possible and so only opened a bank account in his sole name.
46. The Tribunal does not accept that if the applicant was genuinely intending to open a joint bank account with the sponsor that he would not have been able to do so. Even if the applicant was so naive that he did not believe that he and the sponsor could open a joint bank account, he would have been able to make an enquiry with the bank where he was

able to open an account in his sole name and he would have also been able to discuss with the sponsor whether a joint bank account should be opened. It appears that none of this was done which would indicate that both the applicant and the sponsor had no intention of opening a joint bank account or pooling their financial resources.

47. The information in the applicant's sole bank account does not indicate that the applicant providing any financial contribution to the household or meeting any day-to-day living expenses of the sponsor or her family, in whose home he was living.
48. The Tribunal finds that the financial aspects of the relationship did not support a finding that the parties were ever in a genuine relationship. There is no information which would indicate the parties had any joint assets or had joint liabilities. There is no information that the parties were pooling their financial resources or that there was any sharing of day-to-day household expenses or shared financial obligations.

Household

49. Throughout the course of the claimed relationship the sponsor was living in her parent's home in Melbourne. Over the course of the relationship, when the sponsor was in Melbourne, he was staying in the home of the sponsor's parents.
50. There is little information which would indicate that the parties had established a household together which would indicate the parties were living in a genuine and continuing relationship. The applicant claimed that when he first arrived in Melbourne he had a separate bedroom to that of the sponsor. He claimed they only started sharing a bedroom after they were married on 9 October 2016. Varying dates were given as to when he stopped sharing this bedroom with the sponsor. He claimed that it was about a month after their marriage that the sponsor refused to sleep with him and started sleeping with her niece in another bedroom. He also claimed that the sponsor refused to share a room with him after he returned to Melbourne on 19 October 2016 with Mr Sayah.
51. It is clear that if the parties did share a bedroom in the home of the sponsor's family, it was only for a few days. Their sleeping arrangements do not indicate that they were in a genuine relationship or had a mutual commitment to a shared life as husband and wife.
52. There is little information which would indicate that the living arrangements of the applicant and the sponsor within the sponsor's parent's home indicated their relationship was genuine and continuing or one where there was a mutual commitment to a shared life to the exclusion of all others as husband and wife. One of the claims the applicant has made in respect of his allegation that he suffered relevant family violence committed by the sponsor was that he had "asked her politely to serve me food, as I feel shy to go in to her family's kitchen" and she refused to do so showing him no respect. During the hearing, the applicant confirmed that he did not go into the family kitchen or make himself food at any time. The fact that the applicant would not consider it possible for him to enter into the kitchen to get food for himself or be comfortable entering the kitchen indicates that while in the sponsor's parent's home it was not considered that he was living there on a permanent basis or as part of the household. He was not sharing in any house work or even in a position where he would feel comfortable in making food for himself.
53. As indicated below, for much of the period of the claimed relationship the applicant was not living with the sponsor, but had travelled to Sydney to be with his sister.
54. The Tribunal accepts that the applicant stayed in the home of the sponsor's family when he was in Melbourne. The Tribunal finds that if he did share a bedroom with the sponsor, it was for a very short period of time and that for the majority of time the sponsor refused to share a

room with the applicant and instead slept in the bed of her niece in a separate room. The applicant did not participate in the activities of the home including sharing of any of the housework or any domestic chores. The Tribunal finds that at any time the applicant was staying in the home of the sponsor's family that they did not establish a household which would be indicative of the parties living in a genuine and continuing relationship or one where the parties had a mutual commitment to a shared life as husband and wife to the exclusion of all others.

Social aspects

55. The applicant provided statements from the sponsor's mother and sister claiming that the relationship was genuine. The statements are dated 27 October 2016, which is after the date the applicant claimed he had started having "difficulties" with the sponsor after he had travelled to Sydney. The statements do not reflect those difficulties. The applicant provided photos of himself with the sponsor. These appeared to have been taken at the wedding ceremony. The only other photos are of the applicant and the sponsor together by themselves.
56. The applicant has claimed that he married the sponsor on 9 October 2016. Four days later, on 13 October 2016, he left the sponsor and travelled to Sydney to attend a party his sister had arranged for his niece. The sponsor refused to travel with the applicant to Sydney. The fact that the sponsor refused to attend a social function with the applicant immediately after their marriage indicates the parties did not represent themselves as being married to each other. The fact that the applicant was willing to leave the sponsor only four days after they were married also indicates that the parties were not representing themselves to other people as being married to each other.
57. The applicant returned to Sydney to attend another function arranged by his sister. Again, the sponsor refused to travel with him to Sydney. This again indicates that the parties were not representing themselves as being married to each other and were not willing to engage together in social activities. They preferred to remain apart.
58. After the wedding ceremony held on 9 October 2016, there is no information that the applicant and the sponsor participated in any social activities together. There is no indication that the parties had planned to undertake any social activities together.
59. The evidence of the applicant's sister was that when she travelled with the applicant to Melbourne prior to the marriage they had two dinners with the sponsor's family at their home. She also attended the wedding on 9 October 2016. There is no information that she participated in any other social activities with the sponsor or her family after that date. She claimed that when she tried to speak to the sponsor when her brother was with her in Sydney the sponsor refused to speak to her saying that "she had nothing to do with it". This again indicates that the sponsor was not representing herself as being in a married relationship with the applicant.
60. Overall, the Tribunal finds the social aspects of the relationship do not support a finding that the parties were in a genuine and continuing relationship or that the parties had a mutual commitment to a shared life as husband and wife to the exclusion of all others at any time. The social activities of the applicant appear centred on his sister in Sydney and he was happy to leave the sponsor in Melbourne and travel to Sydney even though he claimed the sponsor did not agree with this happening. Apart from the wedding, there does not appear to have been any other social occasion where the parties were representing themselves as being married to each other. The parties did not have any plans while living together for any social activities.

Nature of commitment

61. The parties claimed they had a long relationship prior to the applicant entering Australia. The applicant was granted a subclass 300 Prospective Marriage visa on 14 September 2016. They claim to have been in a committed relationship with each other since December 2014. It was claimed that the sponsor travelled to Lebanon to be able to spend time with the applicant in December 2015.
62. The parties' behaviour, since the applicant was granted the subclass 300 Prospective Marriage visa does not indicate that they were ever committed to a relationship with each other. Although claiming to be devoted to each other, the applicant travelled to Sydney to spend time with his sister before travelling to Melbourne where the sponsor was living. If the parties were in such a devoted relationship with each other, it would be expected at the applicant would have travelled directly to Melbourne to be with the sponsor or the sponsor would have travelled to Sydney to be with the applicant and his sister when the applicant arrived in Australia. That this did not happen indicates a lack of commitment to the relationship by both the applicant and the sponsor.
63. The applicant claimed they were married on 9 October 2016. Four days after this, he left the sponsor in Melbourne and travelled to Sydney to spend a week with his sister because she had organised a party for a niece. The fact that the applicant would leave the sponsor four days after they participated in a wedding ceremony again indicates a lack of commitment to the relationship. The applicant said that the sponsor did not agree with him travelling to Sydney. That he then did travel to Sydney indicates a lack of any emotional support being provided by either the applicant or the sponsor to the other.
64. The applicant claims to have married the sponsor on 9 October 2016. It is noted the marriage certificate states the parties were married on 24 October 2016. The applicant travelled by himself to Sydney over the following periods:
 - From 13 October 2016 to 19 October 2016 (6 days);
 - From 10 November 2016 to 28 November 2016 (18 days);
 - From 1 December 2016 to 8 December 2016 (7 days); and
 - From 17 December 2016.
65. The applicant claimed that he was living in a spousal relationship with the sponsor from after they were married on 9 October 2016 until he left Melbourne on 17 December 2016, a period of just over two months. For about half of this time the applicant was residing with his sister in Sydney without the sponsor. The evidence of the applicant is that the sponsor did not agree with the applicant travelling to Sydney over these periods or, at the very least, refused to travel with him to Sydney. The fact that the applicant spent so much time away from the sponsor in Sydney, particularly immediately after they had just married each other and had been living in separate countries for much of their claimed relationship, indicates the parties did not provide the level of companionship and emotional support to each other which would be expected in a genuine relationship and they did not display the degree of commitment of a couple who had a mutual commitment to a shared life as husband and wife to the exclusion of all others.
66. The applicant stated that he had "a feeling that she has an affair with someone else and she has done all she can to force (him) out of her life". The basis of this claim is that the sponsor was regularly on the phone to other people and she would not allow the applicant to know

who she was talking to. She also refused to give the applicant her phone when he asked for it which made him further suspect that she was having an affair with somebody else.

67. Although there is insufficient information which could lead the Tribunal to find that the sponsor was in a relationship with another person, the behaviour of both the applicant and the sponsor indicates they did not have a mutual commitment to a shared life as husband and wife to the exclusion of all others. The sponsor was not involving the applicant in her social activities and the applicant's belief that she was in a relationship with another person indicates they were not providing the emotional support which would be expected in a genuine relationship.
68. There is no information that at any time after the applicant arrived in Australia that the parties were committed to a long-term relationship. As indicated above, the period of the claimed relationship lasted for only about two months and for a significant proportion of that the applicant was staying with his sister in Sydney. When the applicant was staying with the sponsor in Melbourne they were staying in the home of the sponsor's parents. There is no indication that the parties had any plans or discussed their future together and whether they would live separately from the sponsor's parents. There is no information which would indicate the applicant and the sponsor had developed plans for their future relationship.
69. The Tribunal finds that the parties at no stage after the applicant arrived in Australia had a commitment to each other which would be indicative of the parties having a mutual commitment to a shared life as husband and wife to the exclusion of all others. They did not display the degree of commitment that would be expected in a genuine and continuing relationship.

Other issues

70. As indicated above, the Tribunal has concerns as to evidence provided in support of the application in respect of the parties' marriage. The Tribunal has accepted the evidence of the parties' Certificate of Marriage that they were married on 24 October 2016. The evidence of the applicant is, however, that the only ceremony they participated in was on 9 October 2016.
71. The applicant acknowledged that he did not have a good memory for dates and was confused about when certain events happen. For this reason, when the Tribunal was putting information to him in respect of when particular events occurred the Tribunal referred to documentary evidence which would corroborate the applicant's evidence.
72. The applicant's evidence was that his relationship with the sponsor was good, but deteriorated after he had travelled to Sydney and then returned to Melbourne when the sponsor failed to collect him from the airport and then she and her family refused to let him into their home. He confirmed that this happened when he had been accompanied on a return flight to Melbourne with Mr Sayah. He confirmed that when he was not allowed into the home of the sponsor's family that he decided not to contact Mr Sayah as he would find it embarrassing to tell him that the sponsor had not allowed him in the house.
73. The evidence provided by the applicant of his flight itineraries shows that the only time the applicant flew with Mr Sayah to Melbourne was on 19 October 2016. This is before the applicant filed the Partner visa application and prior to the sponsor's mother and sister signing statutory declarations claiming that the relationship was genuine and the applicant and sponsor were very happy together. This is in contradiction to the evidence provided by the applicant. This undermines the credibility of the information that has been provided in support of the application that the parties were ever in a genuine relationship.

74. The Tribunal has considered all the information before it both individually and cumulatively. This includes taking into account the claims made of the relationship between the applicant and the sponsor which led to the granting of the Prospective Marriage visa and the allegations and claims made in the documents in support of the claim that the applicant has suffered relevant family violence. In assessing the information, the Tribunal is not satisfied that the applicant was ever the spouse of the sponsoring partner.
75. There is no information that the financial aspects of the relationship ever indicated the parties were in a genuine relationship. Claims made that the applicant was responsible for the sponsor's leisure activities are not supported by the evidence provided in his sole bank account statements. There is no information which would indicate the parties were ever pooling their financial resources. The parties spent little time with each other, even over the short time the applicant claimed they were in a genuine relationship. The applicant chose to spend a significant amount of that time with his sister in Sydney. The sponsor never travelled with him to Sydney or spent any time with his sister in Sydney. Apart from their wedding, there is no information indicating the parties represented themselves as being in a married relationship and the parties did not display any commitment to any long-term relationship with each other.
76. For the above reasons, the Tribunal finds that the parties were never in a genuine and continuing relationship and never had a mutual commitment to a shared life as husband and wife to the exclusion of all others. While the parties did live together in the home of the sponsor's family, the nature of the household for the limited period the applicant was staying there was not indicative of the parties being in a genuine relationship.
77. Given these findings the Tribunal is not satisfied that the requirements of s.5F(2) are met at the time of this decision or at any time after the applicant arrived in Australia.
78. The applicant has claimed that he is no longer in a relationship with the sponsor and he has suffered relevant family violence. In order to meet the requirements in cl.801.221(6) the applicant is required to show that he would meet the requirements of subclause (2) or (2A) except the relationship between the applicant and the sponsoring partner has ceased. The Tribunal is not satisfied that the parties ever were in a married relationship as defined in s.5F of the Act. Accordingly, the Tribunal finds the applicant does not meet the criteria in cl.801.221(6) as he has never met the requirements in subclause (2) or (2A). There is no evidence before the Tribunal that the applicant meets any of the alternate criteria in cl.801.221.
79. For the reasons above, the applicant does not satisfy the criteria for the grant of the visa.

DECISION

80. The Tribunal affirms the decision not to grant the applicant a Partner (Residence) (Class BS) visa.

Hugh Sanderson
Member

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).
- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).